

CENTER FOR DISABILITY ACCESS
Amanda Seabock, Esq., SBN 289900
Prathima Price, Esq., SBN 321378
Dennis Price, Esq., SBN 279082
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Triple E Homz LLC, a California
Limited Liability Company;
Giant Bull, Inc., a California
Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Triple E Homz LLC, a California Limited Liability Company; Giant Bull, Inc., a California Corporation (“Defendants”) and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Triple E Homz LLC owned the real property located at or

1 about 36565 Fremont Blvd, Fremont, California, in August 2020.

2 3. Defendant Triple E Homz LLC owns the real property located at or
3 about 36565 Fremont Blvd, Fremont, California, currently.

4 4. Defendant Giant Bull, Inc. owned East Bay United Motors located at or
5 about 36565 Fremont Blvd, Fremont, California, in August 2020.

6 5. Defendant Giant Bull, Inc. owns East Bay United Motors located at or
7 about 36565 Fremont Blvd, Fremont, California, currently.

8 6. Plaintiff does not know the true names of Defendants, their business
9 capacities, their ownership connection to the property and business, or their
10 relative responsibilities in causing the access violations herein complained of,
11 and alleges a joint venture and common enterprise by all such Defendants.
12 Plaintiff is informed and believes that each of the Defendants herein is
13 responsible in some capacity for the events herein alleged, or is a necessary
14 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
15 the true names, capacities, connections, and responsibilities of the Defendants
16 are ascertained.

17
18 **JURISDICTION & VENUE:**

19 7. The Court has subject matter jurisdiction over the action pursuant to 28
20 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
21 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

22 8. Pursuant to supplemental jurisdiction, an attendant and related cause
23 of action, arising from the same nucleus of operative facts and arising out of
24 the same transactions, is also brought under California's Unruh Civil Rights
25 Act, which act expressly incorporates the Americans with Disabilities Act.

26 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
27 founded on the fact that the real property which is the subject of this action is
28 located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

10. Plaintiff went to East Bay United Motors in August 2020 with the intention to avail himself of its goods or services motivated in part to determine if the defendants comply with the disability access laws.

11. East Bay United Motors is a facility open to the public, a place of public accommodation, and a business establishment.

12. Unfortunately, on the date of the plaintiff's visit, the defendants failed to provide wheelchair accessible parking in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

13. East Bay United Motors provides parking to its customers but fails to provide wheelchair accessible parking.

14. A couple of problems that plaintiff encountered is that there was no accessible parking in the parking lot. While there was an ADA sign in front of a parking stall, the parking space ostensibly reserved for persons with disabilities had been allowed to fade beyond recognition. On information and belief, the defendants do not maintain the parking lot. Additionally, the faded parking space was not van accessible. It was designed for standard, smaller vehicles.

15. Plaintiff believes that there are other features of the parking that likely fail to comply with the ADA Standards and seeks to have fully compliant parking available for wheelchair users.

16. On information and belief the defendants currently fail to provide wheelchair accessible parking.

17. These barriers relate to and impact the plaintiff's disability. Plaintiff personally encountered these barriers.

18. As a wheelchair user, the plaintiff benefits from and is entitled to use wheelchair accessible facilities. By failing to provide accessible facilities, the defendants denied the plaintiff full and equal access.

1 19. The failure to provide accessible facilities created difficulty and
2 discomfort for the Plaintiff.

3 20. The defendants have failed to maintain in working and useable
4 conditions those features required to provide ready access to persons with
5 disabilities.

6 21. The barriers identified above are easily removed without much
7 difficulty or expense. They are the types of barriers identified by the
8 Department of Justice as presumably readily achievable to remove and, in fact,
9 these barriers are readily achievable to remove. Moreover, there are numerous
10 alternative accommodations that could be made to provide a greater level of
11 access if complete removal were not achievable.

12 22. Plaintiff will return to East Bay United Motors to avail himself of its
13 goods or services and to determine compliance with the disability access laws
14 once it is represented to him that East Bay United Motors and its facilities are
15 accessible. Plaintiff is currently deterred from doing so because of his
16 knowledge of the existing barriers and his uncertainty about the existence of
17 yet other barriers on the site. If the barriers are not removed, the plaintiff will
18 face unlawful and discriminatory barriers again.

19 23. Given the obvious and blatant nature of the barriers and violations
20 alleged herein, the plaintiff alleges, on information and belief, that there are
21 other violations and barriers on the site that relate to his disability. Plaintiff will
22 amend the complaint, to provide proper notice regarding the scope of this
23 lawsuit, once he conducts a site inspection. However, please be on notice that
24 the plaintiff seeks to have all barriers related to his disability remedied. See
25 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
26 encounters one barrier at a site, he can sue to have all barriers that relate to his
27 disability removed regardless of whether he personally encountered them).
28

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

24. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

25. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

1 26. When a business provides parking for its customers, it must provide
2 accessible parking.

3 27. Here, accessible parking has not been provided in conformance with the
4 ADA Standards.

5 28. The Safe Harbor provisions of the 2010 Standards are not applicable
6 here because the conditions challenged in this lawsuit do not comply with the
7 1991 Standards.

8 29. A public accommodation must maintain in operable working condition
9 those features of its facilities and equipment that are required to be readily
10 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

11 30. Here, the failure to ensure that the accessible facilities were available
12 and ready to be used by the plaintiff is a violation of the law.

13
14 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
15 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
16 Code § 51-53.)

17 31. Plaintiff repleads and incorporates by reference, as if fully set forth
18 again herein, the allegations contained in all prior paragraphs of this
19 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
20 that persons with disabilities are entitled to full and equal accommodations,
21 advantages, facilities, privileges, or services in all business establishment of
22 every kind whatsoever within the jurisdiction of the State of California. Cal.
23 Civ. Code § 51(b).

24 32. The Unruh Act provides that a violation of the ADA is a violation of the
25 Unruh Act. Cal. Civ. Code, § 51(f).

26 33. Defendants’ acts and omissions, as herein alleged, have violated the
27 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
28 rights to full and equal use of the accommodations, advantages, facilities,

1 privileges, or services offered.

2 34. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
3 discomfort or embarrassment for the plaintiff, the defendants are also each
4 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
5 (c).)

6 35. Although the plaintiff encountered frustration and difficulty by facing
7 discriminatory barriers, even manifesting itself with minor and fleeting
8 physical symptoms, the plaintiff does not value this very modest physical
9 personal injury greater than the amount of the statutory damages.

10
11 **PRAYER:**

12 Wherefore, Plaintiff prays that this Court award damages and provide
13 relief as follows:

14 1. For injunctive relief, compelling Defendants to comply with the
15 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
16 plaintiff is not invoking section 55 of the California Civil Code and is not
17 seeking injunctive relief under the Disabled Persons Act at all.

18 2. Damages under the Unruh Civil Rights Act, which provides for actual
19 damages and a statutory minimum of \$4,000 for each offense.

20 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
21 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

22
23 Dated: January 4, 2021

CENTER FOR DISABILITY ACCESS

24
25 

26 By: _____

27 Amanda Seabock, Esq.
28 Attorney for plaintiff